

106TH CONGRESS  
1ST SESSION

# S. 422

To provide for Alaska state jurisdiction over small hydroelectric projects.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 1999

Mr. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To provide for Alaska state jurisdiction over small hydroelectric projects.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ALASKA STATE JURISDICTION OVER SMALL HY-**  
4 **DROELECTRIC PROJECTS.**

5 Part I of the Federal Power Act (16 U.S.C. 792 et  
6 seq.) is amended by adding at the end the following:

7 **“SEC. 32. ALASKA STATE JURISDICTION OVER SMALL HY-**  
8 **DROELECTRIC PROJECTS.**

9 “(a) DISCONTINUANCE OF REGULATION BY THE  
10 COMMISSION.—Notwithstanding sections 4(e) and 23(b),  
11 the Commission shall discontinue exercising licensing and

1 regulatory authority under this Part over qualifying  
 2 project works in the State of Alaska, effective on the date  
 3 on which the Commission certifies that the State of Alaska  
 4 has in place a regulatory program for water-power devel-  
 5 opment that—

6           “(1) protects the public interest, the purposes  
 7       listed in paragraph (2), and the environment to the  
 8       same extent provided by licensing and regulation by  
 9       the Commission under this Part and other applicable  
 10      Federal laws, including the Endangered Species Act  
 11      (16 U.S.C. 1531 et seq.) and the Fish and Wildlife  
 12      Coordination Act (16 U.S.C. 661 et seq.);

13           “(2) gives equal consideration to the purposes  
 14      of—

15                   “(A) energy conservation;

16                   “(B) the protection, mitigation of damage  
 17       to, and enhancement of, fish and wildlife (in-  
 18       cluding related spawning grounds and habitat);

19                   “(C) the protection of recreational oppor-  
 20       tunities,

21                   “(D) the preservation of other aspects of  
 22       environmental quality,

23                   “(E) the interests of Alaska Natives, and

1           “(F) other beneficial public uses, including  
2           irrigation, flood control, water supply, and navi-  
3           gation; and

4           “(3) requires, as a condition of a license for any  
5           project works—

6           “(A) the construction, maintenance, and  
7           operation by a licensee at its own expense of  
8           such lights and signals as may be directed by  
9           the Secretary of the Department in which the  
10          Coast Guard is operating, and such fishways as  
11          may be prescribed by the Secretary of the Inte-  
12          rior or the Secretary of Commerce, as appro-  
13          priate;

14          “(B) the operation of any navigation facili-  
15          ties which may be constructed as part of any  
16          project to be controlled at all times by such rea-  
17          sonable rules and regulations as may be made  
18          by the Secretary of the Army; and

19          “(C) conditions for the protection, mitiga-  
20          tion, and enhancement of fish and wildlife  
21          based on recommendations received pursuant to  
22          the Fish and Wildlife Coordination Act (16  
23          U.S.C. 661 et seq.) from the National Marine  
24          Fisheries Service, the United States Fish and

1 Wildlife Service, and State fish and wildlife  
2 agencies.

3 “(b) DEFINITION OF ‘QUALIFYING PROJECT  
4 WORKS’.—For purposes of this section, the term ‘qualify-  
5 ing project works’ means project works—

6 “(1) that are not part of a project licensed  
7 under this Part or exempted from licensing under  
8 this Part or section 405 of the Public Utility Regu-  
9 latory Policies Act of 1978 prior to the date of en-  
10 actment of this section;

11 “(2) for which a preliminary permit, a license  
12 application, or an application for an exemption from  
13 licensing has not been accepted for filing by the  
14 Commission prior to the date of enactment of sub-  
15 section (c) (unless such application is withdrawn at  
16 the election of the applicant);

17 “(3) that are part of a project that has a power  
18 production capacity of 5,000 kilowatts or less;

19 “(4) that are located entirely within the bound-  
20 aries of the State of Alaska; and

21 “(5) that are located in whole or in part on any  
22 Indian reservation, a conservation system unit (as  
23 defined in section 102(4) of the Alaska National In-  
24 terest Lands Conservation Act (16 U.S.C.  
25 3102(4))), or segment of a river designated for

1 study for addition to the Wild and Scenic Rivers  
2 System.

3 “(c) ELECTION OF STATE LICENSING.—In the case  
4 of nonqualifying project works that would be a qualifying  
5 project works but for the fact that the project has been  
6 licensed (or exempted from licensing) by the Commission  
7 prior to the enactment of this section, the licensee of such  
8 project may in its discretion elect to make the project sub-  
9 ject to licensing and regulation by the State of Alaska  
10 under this section.

11 “(d) PROJECT WORKS ON FEDERAL LANDS.—With  
12 respect to projects located in whole or in part on a reserva-  
13 tion, a conservation system unit, or the public lands, a  
14 State license or exemption from licensing shall be subject  
15 to—

16 “(1) the approval of the Secretary having juris-  
17 diction over such lands; and

18 “(2) such conditions as the Secretary may pre-  
19 scribe.

20 “(e) CONSULTATION WITH AFFECTED AGENCIES.—  
21 The Commission shall consult with the Secretary of the  
22 Interior, the Secretary of Agriculture, and the Secretary  
23 of Commerce before certifying the State of Alaska’s regu-  
24 latory program.

1       “(f) APPLICATION OF FEDERAL LAWS.—Nothing in  
2 this section shall preempt the application of Federal envi-  
3 ronmental, natural resources, or cultural resources protec-  
4 tion laws according to their terms.

5       “(g) OVERSIGHT BY THE COMMISSION.—The State  
6 of Alaska shall notify the Commission not later than 30  
7 days after making any significant modification to its regu-  
8 latory program. The Commission shall periodically review  
9 the State’s program to ensure compliance with the provi-  
10 sions of this section.

11       “(h) RESUMPTION OF COMMISSION AUTHORITY.—  
12 Notwithstanding subsection (a), the Commission shall re-  
13 assert its licensing and regulatory authority under this  
14 Part if the Commission finds that the State of Alaska has  
15 not complied with one or more of the requirements of this  
16 section.

17       “(i) DETERMINATION BY THE COMMISSION.—

18               “(1) Upon application by the Governor of the  
19 State of Alaska, the Commission shall within 30  
20 days commence a review of the State of Alaska’s  
21 regulatory program for water-power development to  
22 determine whether it complies with the requirements  
23 of subsection (a).

24               “(2) The Commission’s review required by  
25 paragraph (1) shall be completed within one year of

1 initiation, and the Commission shall within 30 days  
2 thereafter issue a final order determining whether or  
3 not the State of Alaska's regulatory program for  
4 water-power development complies with the require-  
5 ments of subsection (a).

6 “(3) If the Commission fails to issue a final  
7 order in accordance with paragraph (2), the State of  
8 Alaska's regulatory program for water-power devel-  
9 opment shall be deemed to be in compliance with  
10 subsection (a).”.

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